

Control No. 2005-010

Recording requested by:

City of Milpitas

When recorded mail to:

City of Milpitas

City Engineer's Office

455 E. Calaveras Blvd.

Milpitas, Ca 95035

Record without fee under
Section

6103-Government Code, State
of California

NSC-244, Units A and B

Right of Way Agreement

This authorization ("Agreement") is entered into between The City of Milpitas, a municipal corporation ("the CITY") and State of California, acting by and through the Department of Water Resources ("STATE").

RECITALS

- A. STATE has requested permission from the CITY to enter upon, utilize, and construct improvements to the State Water Project within and adjacent to certain right of way, described as follows ("Agreement Area"): that portion of Piedmont Road near the intersection of Pinard Street as shown on exhibit "A".
- B. STATE's utilization of the Agreement Area for a portion of the South Bay Aqueduct of the State Water Project will be undertaken for the benefit of the STATE, and the local agencies to which STATE supplies water, as shown on exhibit "A".
- C. STATE desires to enter upon the Agreement Area in order to construct and install portions of the South Bay Aqueduct of the State Water Project ("STATE's facilities") described as follows: realign 650 feet of pipeline underneath the southbound lane and Piedmont Road and install 43 concrete piles to a depth of 52-feet as shown on exhibit "A".
- D. The purpose of this Right of Way Agreement is to document the CITY's authorization to enter into such Agreement and describe the terms and conditions governing such Agreement.

The parties therefore agree as follows:

1. CITY's Title. CITY represents that it has sufficient right, title and interest to grant the interests to STATE as specified herein. By acceptance of the benefits hereunder, STATE acknowledges the CITY's title to and interest in the real property of which the Agreement Area is a part and waives any right to contest the validity of such title or interest.

CITY's Grant of Interest. CITY hereby grants all necessary right, title and interest to STATE to construct, repair, operate and maintain STATE's facilities within those portions of the CITY street right of way needed to accommodate said facilities. The rights granted shall include the rights to construct, lay, repair, operate, maintain, and from time to time at any time, reconstruct a pipeline for transportation of water with all fixtures, devices, communications, data and control facilities, manholes, incidents and appurtenances, whether they be at, above, or below, the ground surface, used or useful in operation of said pipeline (hereinafter collectively referred to as STATE's facilities). STATE's facilities shall be placed over and through, under, along and across the Agreement Area situated in the County of Santa Clara, State of California. STATE may modify, alter, enlarge, add to or abandon in place the STATE's facilities and appurtenances upon its request to the CITY and CITY's approval, which approval shall not be unreasonably withheld.

2. Existing Utilities. Installation of STATE's facilities shall not interfere with existing utilities within the Agreement Area. If such interference is unavoidable, STATE will be solely responsible for obtaining permission from the providers of such utilities, coordinating its construction activities with such utility providers and satisfaction of any expenses resulting from such interference. CITY represents that all of its utilities and any other utilities it has knowledge of have been or will be disclosed pursuant to underground service alert.

3. Maintenance, Removal or Relocation of STATE's facilities. STATE acknowledges that the Agreement Area is or may be the site of future CITY improvements in that all rights of use as described herein may be terminated upon 90 days prior notice of termination by the CITY to the STATE. However, prior to any potential termination, STATE shall be given a reasonable time to develop a proposal for the compatible location of STATE's facilities and the future CITY improvement. Upon such termination, STATE shall, within a reasonable time prescribed by the CITY, remove or relocate all STATE's facilities placed, constructed or maintained within the Agreement Area by STATE. If STATE fails to comply with such termination notice within the time prescribed, the CITY may remove and destroy STATE's facilities without reimbursement to STATE, its successors and assigns, and the cost of such removal shall be paid by STATE, its successors and assigns, to the CITY and shall constitute a debt owing to the CITY. So long as the permit remains in effect, STATE shall be solely responsible for maintenance of STATE's facilities.

4. Construction Standards. Construction of STATE's facilities will conform in all respects to the standards and requirements of the CITY and will be subject to the CITY's normal inspection and approval procedures. CITY represents that it has given written notice of all of its standards, requirements, inspection and approval procedures to STATE.

5. Indemnity/Hold Harmless.

A. STATE's Indemnity. STATE hereby agrees to indemnify and hold harmless the CITY, its elected and appointed boards, officers, agents and employees, from any liability, claims or damages for personal injury or death as well as for property damage which may arise as a result of this Permit, whether due to acts or omissions of STATE or any subcontractor, agent, employee or other persons or entities directly or indirectly employed by or acting as agent or under the direction of STATE.

B. CITY's Indemnity. CITY hereby agrees to indemnify and hold harmless the STATE, its officers, agents and employees, from any liability, claims or damages for personal injury or death as well as for property damage which may arise as a result of CITY's activities on or near the Agreement Area, whether due to acts or omissions of CITY or any subcontractor, agent, employee or other persons or entities directly or indirectly employed by or acting as agent or under the direction of CITY.

C. CITY's Inducement. The parties acknowledge that this indemnity provision is a material inducement for the CITY to grant this authorization and that the CITY would not grant this authorization without these indemnity provisions.

6. Termination/Revocation. As set in paragraph 3 above, the CITY may terminate this Permit. Determination by the CITY Council of the CITY that STATE, its successors or assigns, is in default hereunder may be cause for revocation of this permit. However, STATE shall be given a reasonable opportunity to cure any default prior to revocation. By acceptance hereof, STATE waives any claim, loss, damage action against the CITY resulting from the termination or revocation of this Permit or removal of STATE's facilities by the CITY as permitted herein.

7. Attorney's Fees. In the event of legal action between the parties with respect to this authorization, the party prevailing in such action will be entitled, in addition to such other relief as may be granted, to a reasonable sum as its attorney's fees and costs.

8. Compliance with other Conditions. STATE acknowledges that the authorization contained herein is in addition to and not in lieu of any other permits, inspections or approvals which STATE may need to obtain from the CITY, from other utility providers or property owners with respect to its construction of STATE's facilities and that STATE must comply with all additional conditions imposed by the CITY with respect to construction of STATE's facilities. CITY hereby represents that it has provided STATE a written list of all such permits, inspections, approvals and conditions, and shall not claim the need for any other permits, inspections, approvals or conditions.

9. Agreement Authorization. Based upon the terms and provisions in this Agreement, the CITY hereby authorizes construction of improvements to the State Water Project by STATE within the Agreement Area.

CITY's Activities. In the event that CITY at any time intends to modify, improve, otherwise change or perform extraordinary maintenance, not including routine paving, widening or other improvements to the surface of the right of way in a manner which does not interfere with STATE's facilities on portions of any street wherein STATE's facilities are located, STATE does hereby consent to such action by CITY, provided that:

- a. Thirty days before any such activity, CITY shall notify STATE, provide STATE copies of the plans and specifications and comply with reasonable suggestions of the STATE for the protection of STATE facilities. In cases of emergency, CITY shall notify STATE as soon as practical.
- b. CITY shall make or affect such changes and perform or cause to be performed all work in connection therewith at CITY's own cost and expense.
- c. In the event CITY intends to relocate, vacate, abandon, or relinquish portions of any street wherein STATE's facilities are located, CITY shall notify STATE of its plans and make all reasonable efforts to assist the STATE in protecting its right of way for the STATE's facilities.

10. Successors and Assigns. This authorization will bind and inure to the benefit of the parties, the respective heirs, successors and assigns. This authorization is intended to run with the benefited property as a covenant running with the land and the obligations of STATE described herein will constitute continuing obligations of all persons or entities succeeding to STATE's ownership interest in such benefited property.

11. Underground Service Alert Membership. STATE shall become a member of the underground service alert and remain an active member for perpetuity of the Agreement. The STATE's facilities shall be located beneath the pavement section, within the subgrade of Piedmont Road.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this _____ day of _____, 2005, at Milpitas, California.

STATE of California:

By: _____
Clifford E. Winston, Acting Chief
Real Estate Branch

Approved as to form and sufficiency:

Ward A. Tabor
Assistant Chief Counsel

CITY OF MILPITAS, A MUNICIPAL CORPORATION:

Date: _____ By _____
Charles Lawson, City Manager

Attest:

Mary Lavelle, City Clerk

Approved as to form:

Steven T. Mattas, City Attorney

Recommended by:

Greg Armendariz, City Engineer

ALL PURPOSE ACKNOWLEDGMENT

State of California)
) s.s.
County of _____)

On _____, before me, _____,
personally appeared _____,
_____ personally known to me; _____ or proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/are subscribed
to the within instrument and acknowledged to me that he/she/they executed
the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s) or the entity upon behalf of
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.
(SEAL)

Signature of Notary Public

CAPACITY CLAIMED BY SIGNER:

Though statute does not require the notary to fill in the data below, doing so
may prove invaluable to persons relying on the document.

____ Individual(s)
____ Corporate Officer(s) Titles _____ and _____
____ Partner(s) _____ Limited _____ General
____ Attorney-in-Fact
____ Trustee(s)
____ Guardian/Conservator
____ Other _____ :

Signer is
representing: _____

ATTENTION NOTARY: Although the information requested below is optional, it could prevent fraudulent attachment of this certificate to unauthorized document.

Title or type of
document _____

Number of pages: _____

Date of document: _____

Signer(s) other than named above:

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT
DESCRIBED ABOVE

EXHIBIT "A"

NSC-244

Those portions of Rancho Milpitas, being also a portion of Lots 29 and 30 as described in the Decree of Partition recorded October 16, 1869, in Book C of Miscellaneous Records, at Page 428, Official Records of Santa Clara County, State of California, said portion also being a portion of Parcels A and B of the Record of Survey, recorded on September 28, 1961, in Book 138, at Page 33-35 of said Official Records, described as follows:

The right, title and interest to construct, lay, operate, maintain, and from time to time at any time reconstruct, modify, alter, enlarge, add to, relay, remove and replace one or more pipelines for transportation of water, and all fixtures, devices, incidents and appurtenances used or useful in the operation of said pipeline or pipelines over, through, under, and across the following described parcel of land:

UNIT A

COMMENCING at the standard City of Milpitas monument at the intersection of Piedmont Road and Pinard Street, which bears North $06^{\circ} 31' 13''$ West 580.13 feet from a standard City of Milpitas monument, said monuments being shown on the Final Map of Tract 7945, recorded April 5, 1988, in Book 585 of Maps, Pages 5-9, of said Official Records;

thence along the Northerly prolongation of the line between said monuments North $06^{\circ} 31' 13''$ West 125.03 feet to the Easterly prolongation of the Northerly boundary of said Tract 7945;

thence leaving said Northerly prolongation line along said Easterly prolongation South $82^{\circ} 15' 00''$ West 37.16 feet to the Westerly line of Piedmont Road as shown on said map of Tract 7945 and the Point of Beginning;

THENCE FROM SAID POINT OF BEGINNING Northerly along said Westerly line of Piedmont Road, as shown on the Final Map of Tract 7942, recorded May 25, 1989, in Book 600 of Maps, Pages 3-7, of said Official Records, the following 2 courses:

- (1) North $01^{\circ} 25' 06''$ East 51.78 feet; and
- (2) North $06^{\circ} 31' 13''$ West 90.28 feet;

thence leaving said Westerly line North $14^{\circ} 51' 52''$ East 24.24 feet;

thence along a tangent curve to the left, having a radius of 20.00 feet, through a central angle of $25^{\circ} 37' 03''$, an arc length of 8.94 feet;

thence North $10^{\circ} 45' 11''$ West 6.69 feet;

thence North $79^{\circ} 14' 49''$ East 10.28 feet to a point on that certain course in the Westerly line of Parcel 8A (DWR Parcel No. NSC-91 Unit A) as North $10^{\circ} 12' 51''$ West 313.16 feet, as described in the Final Order of Condemnation No. 153595, in favor of the State of California, filed

November 25, 1968, Document No. 3526349, of said Official Records, and the point hereinafter referred to as Point "A";
thence along said Westerly line of Parcel 8A South 10° 12' 51" East 257.17 feet;
thence South 01° 12' 48" East 295.95 feet;
thence leaving said Westerly line of Parcel 8A South 89° 00' 41" West 9.15 feet to said Westerly line of Piedmont Road;
thence along said Westerly line of Piedmont Road North 06° 31' 13" West 170.67 feet;
thence leaving said Westerly line of Piedmont Road North 51° 53' 09" West 13.33 feet along the Northeasterly line of Lot 209 of said Tract 7945;
thence leaving said Northeasterly line North 06° 30' 38" West 173.57 feet to the Easterly line of Lot 208 of said Tract 7945, said Easterly line also being said Westerly line of Piedmont Road;
thence continuing along said Westerly line North 01° 25' 06" East 16.66 feet to said Northerly boundary of Tract 7945 and the Point of Beginning.

Containing 0.36 acre, more or less.

UNIT B

COMMENCING at the hereinabove designated Point "A";
thence North 79° 14' 49" East 34.94 feet to a point on that certain course in the Easterly line of said Parcel 8A as South 10° 13' 33" East 317.75 feet, and the Point of Beginning, said point bears South 10° 13' 33" East 58.65 feet from the Northerly terminus of said course;
THENCE FROM SAID POINT OF BEGINNING along said Easterly line South 10° 13' 33" East 56.81 feet;
thence leaving said Easterly line North 14° 51' 52" East 17.22 feet;
thence along a tangent curve to the left, having a radius of 80.00 feet, through a central angle of 25° 37' 03", an arc length of 35.77 feet;
thence North 10° 45' 11" West 6.69 feet;
thence South 79° 14' 49" West 14.79 feet to the Point of Beginning.

Containing 586 square feet, more or less.

Bearings and distances used in the above descriptions are based on the California Coordinate System, CCS27, Zone 3.



